

Cheryl Frazier

From: Isabella Choate [nyala_acton@me.com]
Sent: Monday, January 09, 2012 2:18 PM
To: Board of Appeals
Subject: 348-364 Main Street - Kennedy Landscape

To the members of the Board,

Do we know what Mr. Kennedy's plans are about continuing the landscape construction portion of his operation? The plans show the relocation of the garden center/nursery which I agree is clearly protected agricultural use but what about the off-site landscape construction business which I don't believe qualifies as "agricultural use" under MGL Ch 40A sec 3. And at least one 2010 Land Court decision (see below) I've seen seems to support that position.

Is the intent to continue that portion of the current operation at the new location or will it be moved onto the residential parcel used by Kennedy across Main Street? And can that legally happen under our zoning? It seems to me this is a question which needs to be addressed at some point to be fair to Mr. Kennedy.

Thank you,

Isabella Choate
nyala_acton@mac.com

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
LAND COURT DEPARTMENT

ROBERT SKYDELL, ROSEMARIE WILLET, CHARLES FITZGERALD and ROBERT CHIDSEY v. MATTHEW TOBIN, TEA LANE NURSERY AND FARMS, INC., TOWN OF CHILMARK, LEONARD JASON, JR., in his capacity as BUILDING INSPECTOR AND ENFORCEMENT OFFICER FOR THE TOWN OF CHILMARK, and ROBERT LUNBECK, WILLIAM ROSSI, FRANK LARUSSO, CHRIS MURPHY, PETER KNIGHT, RODNEY BUNKER, WENDY WELDON and MIKE MARR in their capacity as members or alternate members of the CHILMARK ZONING BOARD OF APPEALS

18 LCR 174

MISC 04-303324
DUKES, ss.
April 6, 2010

Long, J.

Cheryl Frazier

From: Kim Meusel [tkmeusel@comcast.net]
Sent: Tuesday, January 10, 2012 8:17 AM
To: Board of Appeals
Subject: Next Generation Day Care proposal

To the Zoning Board,

Please, please, please continue to fight this project! There has to be laws and provisions protecting towns from major corporations like this.

I am shocked and dismayed that someone could buy up a couple single family homes, quickly level them and plan to put up a facility for hundreds. There may be provisions that give schools more latitude but it can't possibly allow a free pass to do anything imaginable.

I know we have to be careful not to block all businesses, but this project is so extreme. This location could support a restaurant or store or the couple single family homes that used to be there, but NOT this 20,000 square foot facility serving commuters from other towns.

If they win and this goes forward I am very afraid of the precedent it would set. We already have single family homes being replaced by multi family units in every corner of our town. I feel strongly that we have to gain control of the towns growth and work towards our own common plan for the future of Acton.

Thank you for your work and again please do whatever you can to uphold our laws, bylaws and fight The Next Generation Day Care Project from moving forward.

Sincerely,

Kim and Tom Meusel
11 Jackson Drive

Peter K. Ashton
One Olde Barn Way
Acton, MA 01720

January 10, 2012

Board of Appeals
Town of Acton
482 Main St.
Acton, MA 01720

Re: Board of Appeals Hearing #12-01, Petition for Review, Walker Realty and Next Generation, January 11, 2012

Members of the Board of Appeals:

Due to a prior commitment, I will be unable to attend your hearing on the above referenced matter on Wednesday evening, but I hope you will make this letter part of the hearing record and please give it due consideration.

I urge you to uphold the decision of the Zoning Enforcement Officer's denial of the most recent plan submitted by Walker Realty on behalf of Next Generation Children's Center. This plan is no different and in fact more detrimental to the community than the prior plan that Walker submitted on behalf of Next Generation back in 2009. The only significant change is that the lot area is being combined with the adjoining property, formerly the Kennedy nursery and landscaping businesses. In fact it is my understanding that there are serious questions regarding the ability of Kennedy to alter both its nursery and landscaping uses on the existing site which I discuss later.

The most significant issue is that the expansion of the lot size does not cure the fundamental problem of this proposal: it is far outside the maximum net floor area, provides insufficient open space, creates a major threat to public safety, and is not in keeping with the character of the town, particularly given that this *commercial* operation is situated in the R-2 *residential* zoning district. The proposed site is not close to any commercial uses and now encroaches even more on a residential neighborhood marked by relatively small lots and small homes. As with the prior proposal, Next Generation should not be allowed to build a "factory-size" child care facility within the confines of a residential neighborhood. Our zoning is clear; we allow child care facilities in residential districts only where such facilities are consistent with the size and dimensional features of the surrounding neighborhood. This proposal fails to meet that test.

The Zoning Enforcement Officer's denial lists several reasons for denying the project. The first two are critically important and should be the basis for upholding his finding. First, the town recently amended its zoning bylaw to permit a child care facility in a residential district to be no larger than 2,500 sq. ft. The Next Generation proposal is almost nine times that size at

21,290 sq. ft.¹ In June 2009 the town amended its zoning bylaw with regard to the permitted size for Child Care facilities in residential districts. As a direct result of the initial Next Generation proposal as well as this Board's ruling in that matter, the town determined that its prior size limitation of only 1,000 sq. ft. was insufficient. Through careful analysis, review of case law, and study of information regarding the size of other child care facilities in town as well as residential buildings, the dimensional regulations for child care facilities were changed to increase the allowed maximum net floor area to 2,500 sq. ft. in R-2 districts and up to 5,000 sq. ft. in R-10 districts. As was demonstrated at the Town Meeting presentation, the maximum size of 2,500 sq. ft. in the R-2 district is reasonable and is intended specifically to accommodate stand-alone child care facilities in residential zoning districts while also maintaining a reasonable and proportionate relationship to the residential buildings in those zoning districts. To permit the construction of a child care center that is almost nine times the allowed size would result in a development that is totally out of character with the surrounding neighborhood and would defeat the purpose of the amended by-law.

The proponent relies heavily on the ZBA's language in its prior decision when the Board found that the 1,000 sq. ft. limitation was unreasonable and unduly restrictive. Such reliance on the Board's prior decision is a red herring as the Zoning By-Law was changed specifically in order to cure this problem. While 1,000 sq. ft. might be considered overly restrictive, 2,500 sq. ft. in the R-2 zoning district is entirely reasonable. The presentation at the June 2009 Town Meeting demonstrated this point clearly when it showed that median net floor area of residential buildings in the R-2 district is between 2,000 and 2,500 sq. ft. Furthermore, the presentation showed that the size of other day care centers in town are generally less than 2,500 sq. ft. and those that are in residential districts do not exceed 2,500 sq. ft. Thus, this new size limitation is entirely reasonable and in keeping with the character and size of buildings in our residential neighborhoods. The amended bylaw was specifically designed not to overly limit the citing of a day care facility in a residential district while protecting the residential character of the area. This clearly meets the legal test of being related to a legitimate municipal concern.²

The second basis for the denial is the failure of the proposal to provide sufficient open space. Our zoning by-law requires a minimum of 35% open space outdoor excluding play areas and excluding perimeter landscaping. Again this requirement is to ensure that the child care center fit into the character of the residential area. This plan provides *less* than 30% open space and even some of that is provided in arguably very creative ways. Again the plain fact is that the proposal does not meet our zoning by-law which is sufficient grounds for denial and that denial should be upheld by this Board as the requirement is fair and reasonable.

Although the Zoning Officer did not make a finding regarding the number of parking spaces, it appears that the proposal also violates the maximum number of parking spaces allowed per our amended zoning by law. The bylaw states that a minimum of one space per 10 children plus one space per each staff person on the largest shift is the *maximum* allowed number of

¹ The net area shown on the plan is smaller, however, it appears to exclude bathrooms, which I believe should be included in the net floor area calculation.

² Indeed the proponent is free to build a facility of this size in a non-residential district, or to build a 2,500 sq. ft. facility at the present location. Such a facility would be on the same scale as all other such facilities in town.

parking spaces. The Center is intending to house 262 children and the plan shows 64 staff people at peak for a maximum of 90 spaces, yet the plan shows 91 spaces in excess of the maximum number of spaces. Furthermore, there is no supporting data to show the basis for the 64 staff people at peak time. This seems extremely high and represents a very high proportion of staff to children. The Board should request additional information to justify this figure.

Of even greater concern are the general public safety and traffic issues relating to this plan. The revised plan shows the child care center located much closer to the Public Safety facility than the prior plan. Traffic along Main St. is already highly congested, particularly at rush hours, the same time when families would be delivering and picking up their children at the proposed site. The potential for backups onto Route 2 as well as gridlock on Route 27 and the Hayward Road intersection are extremely likely. The potential to block the entrance and exit from the Public Safety facility is also highly likely which could have catastrophic effects for emergency response.

The proposal does not provide a traffic study or even an update to the prior study, but baseline traffic continues to get worse. I travel by this lot every day between 7:15 and 7:30 am and traffic exiting Route 2 east heading onto Main St is routinely backed up, at times onto Route 2 itself. Adding another 150 cars or more at this time of day is simply asking for a disaster. In addition, this proposal would negatively impact the schools' transportation operation and cause further delays in delivering children to the public schools and also raises other public safety issues including pedestrian safety. These schools including the regional campus and the Twin Schools are located near the proposed site where over 4,000 students and 400 teachers and staff must come and go at approximately the same time as the peak drop off and pick up times would be for Next Generation. This proposal will exacerbate an already bad traffic situation because the proposed child care center is simply much too large. It does not require much imagination to visualize the traffic issues at this location between 7 and 9 am when 260 families deliver their children (not to mention 60 or more teachers and administrators), while many town citizens are entering Route 2 to go to work, and school buses traverse this location to get children to school.

A final issue with this proposal is that although Kennedy's nursery business is exempted as an agricultural use, the same cannot be said for its landscaping business and it was only through a grandfathering arrangement that the landscaping business has been allowed to continue to operate. With its change in location, the landscaping business cannot be permitted to continue to operate as in the past. This issue should be explored further by the Board and Kennedy must be made aware of this fact. If he is not allowed to operate the landscaping business, he may decide not to sell his property to Walker. The plan also provides no details regarding the Kennedy nursery and landscaping business uses. Currently, the businesses utilize space directly across the street on the east side of Main St. and there is already concern regarding workers and customers walking across a very busy street. No crosswalk or other safety measures are shown on the plan. With the proposed relocation of the Kennedy businesses to the south, the movement across the street will be further exacerbated, causing significant safety concerns for workers and customers.

Last spring at Town Meeting the town voted virtually unanimously to support a resolution that expressed opposition to Next Generation coming to Acton at 352 Main St. Last

night the Selectmen voted to oppose this project, expressing a willingness to continue to litigate, and town staff has provided comments indicating significant problems with this proposal. No one in Acton wants this day care facility at this location. I urge the Board to uphold the Zoning Enforcement Officer's decision. This is clearly within the Board's authority to enforce reasonable regulations concerning the bulk and height of structures. Our Zoning By-Laws, particularly the changes that were made at the June 2009 special Town Meeting are reasonable regulations that are not unduly restrictive and protect legitimate municipal concerns.

Very truly yours,

Peter K. Ashton

Peter K. Ashton

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Cheryl Frazier

From: Lee Chadeayne [lee.chadeayne@gmail.com]
Sent: Tuesday, January 10, 2012 6:18 PM
To: Board of Appeals
Subject: Opposed

Please add my voice to that of those who oppose the New Generation center at the intersection of 2 and 27.

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Lee Chadeayne
P.O. Box 965
Acton, MA 01720 USA
Tel. 978-263-0613

<http://www.chadeayne.net/>
and

http://www.amazon.com/Lee-Chadeayne/e/B003ZWQIUG/ref=ntt_athr_dp_pel_2/

✓

Cheryl Frazier

From: Joan Meyer [joan@acton-realestate.com]
Sent: Tuesday, January 10, 2012 7:09 PM
To: Board of Appeals
Subject: Next Generation Children's Center

I have serious concern over such a large structure and activity in that location! Safety as well as size of the business concerns me. Are we becoming like Westford, Rt. 110? That location cannot support the traffic or the size of structure. Passing a turning car will be impossible, so the bottle neck of cars will stretch for miles. It makes me think of the Big Box businesses we are so against in town. I lived in Acton from 1966 to 1999, and am now in Boxboro. Our town zoning laws have let Acton grow in a nice way, this would not be nice! What will happen if they cannot fill the school with less population of two working parents? Will it end up an empty building with the owners coming back to the town for a change of use?

I would not want to see this approved. Thank you for your concerns in behalf of the town.

Joan Meyer, Prior member of the Kelly's Corner Committee

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Cheryl Frazier

From: Deanna Downs [deanna.downs@gmail.com]
Sent: Tuesday, January 10, 2012 7:36 PM
To: Board of Appeals
Subject: Next Generation Children's Center

ZBA members, My husband and I urge to deny the permit requested by the Walker Group to build a child care center on Main St. We feel that it is a poor business decision on their part. Just checking on Google you will find over twenty child care centers in Acton and Boxborough. That did not include the surrounding areas of Maynard, Littleton, Concord or Westford. To believe that a new care facility of 20,000 sq.ft would be successful in our economy is foolish. The town will be left with a white elephant building with tiny sinks and toilets that will sit empty.

Please consider the impact on Acton and deny this permit.

Sincerely,

Deanna and George Downs

29 Duggan Rd

Acton, MA 01720



Cheryl Frazier

From: Adishesu Channasamudhram [csadi@hotmail.com]
Sent: Tuesday, January 10, 2012 7:47 PM
To: Board of Appeals
Subject: Concern regarding Next Generation Children's center proposal

Dear Sir/Madam

This is in regards to the subject lone matter for which a hearing has been scheduled for tomorrow (wed 11 2012)

I'm a resident of acton living right behind the proposed site. I would like to voice my concern in regards to this Proposed project as this may add to the growing traffic problem on Rt 27 and spilling over to Rt. A well as Hayward....

I'm confident that you will take the right decision and as per the zoning laws....

Thanking you

Sincerely

Adishesu
10, Isaac Davis way, acton, ma



Cheryl Frazier

From: r esecson [esecson2000@yahoo.com]
Sent: Tuesday, January 10, 2012 8:08 PM
To: Board of Appeals
Subject: Next Generation Children's Center

Gentlemen,

I would like to voice my concern re: the aforementioned Children's Center and its proposed building site on Route 27 at the intersection of Route 2. This is probably one of the worst locations that could be considered for a child care center of 20,000 sf, or for any 20,000 square foot building that is going to have a large volume of car traffic exiting during peak traffic times on Route 27. My objection is one of personal safety and traffic flow. This is a highly congested area with heavy traffic travelling south and turning onto Route 2 West and Route 2 East, coupled with heavy northbound traffic. When you add the lack of traffic lights and the lack of additional parking of any kind on the northbound side of the road, this location is poor for any business that has a high volume of car traffic. Additionally as someone who walks along Route 27, crossing on the cross walk closest to the centers desired location is treacherous as cars do not stop for pedestrians. On more than one instance I have had to sprint across the street to avoid being hit by cars that fail to yield to pedestrians.

Any building that has a high volume of traffic at peak times would not be a good fit for this location and would only add to the traffic problems and create a more hazardous environment for pedestrians.

Thanks for your consideration and I urge you to deny this project a permit for this location.

R.M. Esecson
7 Stacy's Way
Acton, MA

978-828-8382

Cheryl Frazier

From: Narbonne, Andre [Andre_Narbonne@irco.com]
Sent: Tuesday, January 10, 2012 8:38 PM
To: Board of Appeals
Subject: Next Gen Childrens Center

Dear Zoning Board:

I am in complete agreement to DENY the Next Generation Childrens Center a permit for the reason previously.

THANK YOU

Andre L. Narbonne and Christine Vanasse
14 Algonquin Road
Acton MA 01720

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Cheryl Frazier

From: Deb Matthews [debcmatthews@gmail.com]
Sent: Tuesday, January 10, 2012 10:00 PM
To: Board of Appeals
Subject: NGCC proposal

to the Acton ZBA:

This letter is to urge you to not approve NGCC's proposed child care facility on route 27.

While I am all for another business in town contributing to our tax base, this specific proposal will make Rt 27 traffic even worse than it already is. Most nights, it is solid traffic from the train station all the way past town hall. I live off Newtown Road, and feel like I already take my life in my hands on a regular basis trying to cross Rt 27 at rush hour. Add another 250-300 cars to the rush hour burden, and we'll have gridlock that will make the Newtown Rd crossing impossible.

I'm also concerned about the impact on our school buses. My kids are already on the bus for 35 min, and I live less than 2 miles from school. the bus route is not that long... but traffic already slows things down. More traffic will mean that all of our kids are spending more time on buses. That's a great loss of time when you add it all up. Plus, there is a pollution impact of all the cars slowly making their way through our town in traffic...

I also support other writers' comments that we should fight to preserve our current zoning rules - once we start breaking them for one party, we will have to break them for others too. I think maintaining the residential character of residential-zoned neighborhoods is essential.

This is a fight worth fighting.

Thanks for your consideration,

Deb Matthews
11 Lincoln Dr
Resident since 1998

Cheryl Frazier

From: Corinne Hogseth [corinnehog@verizon.net]
Sent: Tuesday, January 10, 2012 10:45 PM
To: Board of Appeals
Subject: Next Generation daycare

Dear ZBA Members,

This proposal is a terrible idea -- everyone knows that. Terrible location, terrible impact on our existing childcare providers. It adds nothing to our community.

Please fight them every step of the way. Put up every barrier you can. Don't allow any deviations from the zoning bylaws. I am among the many Acton residents who are happy to see the town finally standing up to a developer. It is worth the cost of litigation to prevent this monstrosity from being built.

Sincerely,
Corinne Hogseth
61 Seminole

Cheryl Frazier

From: Leigh and David Honn [ldhonn@comcast.net]
Sent: Tuesday, January 10, 2012 10:52 PM
To: Board of Appeals
Subject: Comments for Jan 11, 2012 Public Hearing - Walker Realty
Attachments: ZBA_Walker Realty Appeal.doc

Dear ZBA,

Please include the attached document as comments in the ZBA's Walker Realty Next Generation Appeal file.
I request these comments be read into the record at the Public Hearing on January 11, 2012.

Thank you for your attention and consideration.

David Honn
105 School Street
Acton

January 10, 2012

Zoning Board of Appeals
Acton Town Hall

Re: Walker Realty Appeal for Next Generation Project

Dear ZBA,

Please include the following comments in the ZBA's Walker Realty Next Generation Appeal file. I request the following be read into the record at the Public Hearing on January 11, 2012.

As a member of the Acton Design Review Board and a practicing architect for the past 30 years, familiar with the use and interpretation of zoning codes, I strongly urge the ZBA to uphold the Acting Zoning Enforcement Officer's denial of Walker Realty's appeal.

From the correspondence available in the online project file it is apparent that the petitioner believes that by merely increasing the size of the site in order to satisfy the FAR requirement of .1, they are entitled to a building permit regardless of the 2,500 square foot limit for Daycare Centers in Acton. A limit of a .1 FAR and a 2,500 square foot limit for this use are entirely separate requirements. The petitioner is proposing a building more than 8X larger than the allowable square footage (21,000 +/- square feet versus 2,500 square feet). In my experience I know of no ZBA that has ever approved a building 8X larger than the allowable square footage for a particular use. Even 2X larger is highly unusual.

It is my understanding that, within the past two years or so, Acton has increased the previous 1,000 square foot limit for Daycare Centers by a factor of 2.5X to the now codified 2,500 square foot limit after extensive research of existing precedents in other localities. This effort was conducted after the reasonableness of the previous 1,000 square foot limit was challenged.

The ZBA previously rejected this petitioner's appeal when the limit for Daycare Centers was 1,000 square feet. Now the Board is apparently faced with an analogous situation involving a 2,500 square foot limit. I urge the ZBA to deny this appeal and allow the Land Court, if necessary, to decide if Acton's 2,500 square foot limit is reasonable.

Thank you for considering my comments.

Sincerely,
David Honn
105 School Street
Acton, MA 01720

Cheryl Frazier

From: Laurel Bailey Ghose [laurelghose@gmail.com]
Sent: Wednesday, January 11, 2012 5:23 AM
To: Board of Appeals
Subject: Next Generation appeal

Hello Zoning Board of Appeals,

I am an Acton resident & I agree with the Acton Board of Selectman's decision to deny the permit for another day care in Acton. Adding Next Generation Day Care to the intersections of rte 2 & 27 would not bring anything positive to our town.

I am unable to attend tonight's meeting, but hope that you will consider my opinion when making your decision.

Thank you,

Laurel Ghose

5 Faulkner Hill Rd

Acton, MA 01720

978-263-1073

Cheryl Frazier

From: Aklochrie [aklochrie@aol.com]
Sent: Wednesday, January 11, 2012 7:14 AM
To: Board of Appeals; Board of Selectmen
Cc: beacon@cnc.com
Subject: Proposed Day Care Center

Thank you for the opportunity to share with you my opposition to the proposal to build an enormous day care center in Acton at the intersection of Main Street (Route 27) and Route 2.

A major appeal of Acton is our ongoing attempt to balance both progress as well as our commitment to retaining our identity as a small town. The impact of this proposed daycare center is akin to building an enormous WAL-MART in that spot.

Furthermore, since we seem to have sufficient daycare resources to fulfill our resident's needs, this facility would serve as nothing more than a convenient spot for residents of numerous other towns to drop off their children. I would have the same objection if a proposal were under consideration to build a huge parking garage and bus terminal/train station where people could come from other towns to leave their cars here in Acton, merely because of the on-and-off- the-highway convenience of the property's location.

Residents of Acton very much appreciate your steadfastness and resolve on this issue .Please know that you have my, and most other members of the Acton community's, total support as you continue to stand firm in fighting it.

Annette M. Lochrie
57 Windsor Avenue
Acton, Massachusetts
01720

Cheryl Frazier

From: bowry [mlbowry@mymailstation.com]
Sent: Wednesday, January 11, 2012 6:19 AM
To: Board of Appeals

I do not want a day care center at the junction of rt.2 & 27.
What would like to see is COA build in that lot.

Cheryl Frazier

From: tigerale@aol.com
Sent: Wednesday, January 11, 2012 7:46 AM
To: Board of Appeals
Subject: Next Generation

Please do not allow this daycare center to be built! The traffic will be unbearable and driver's safety will be at risk. The intersection of RT27 with RT2 is simply a terrible place to have children dropped off and picked up.

Roger Schneider
9 Beechnut ST

Cheryl Frazier

From: Jean Lane [thenewjean@yahoo.com]
Sent: Wednesday, January 11, 2012 9:47 AM
To: Board of Appeals
Subject: day care

I am very much against this day care for the reason of traffic, at times it is very difficult to get off Rt and try to get into Acton Medical, let alone all the school busses going to the schools on Hayward. I also feel the childcare businesses in Acton should be supported as they are excellent and will be hurting if this mega business is approved. The statement made by the neighbor about unfulfilled promises the Walker Company made to him should be a red flag as to what may come. Jean Lane, 30 Nash Road